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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 1, 2002

APPLICATION OF

APPALACHIAN POWER COMPANY
d/b/a AMERICAN ELECTRIC POWER-
VIRGINIA

CASE NO. PUE010011

For approval of a Functional Separation
Plan under the Virginia Electric Utility
Restructuring Act

ORDER PROVIDING CLARIFICATION

On December 18, 2001, the State Corporation Commission ("Commission") entered its Order on Functional Separation ("Order") in this proceeding adopting certain stipulations entered into by the parties relevant to the functional separation of Appalachian Power Company d/b/a American Electric Power–Virginia ("AEP-VA" or "Company"). On January 7, 2002, the Old Dominion Committee for Fair Utility Rates ("Old Dominion Committee") filed a Petition for Reconsideration and Clarification in this matter ("Petition"). The Petition requested the Commission to reconsider the "Rate Unbundling Stipulation" ("Stipulation") adopted by the Commission in the Order and to clarify that the Commission has not approved a certain 90-day notice requirement that AEP-VA included in its December 28, 2001, compliance filing ("filing").

The Old Dominion Committee explains in its Petition that AEP-VA's filing included a tariff provision in the "Use Of Energy By Customer" section of the Company's Terms and Conditions of Service that imposes a 90-day waiting period before a customer may switch to an alternative supplier.

According to the Old Dominion Committee, if a customer does not elect to switch during that 90-day period, the proposed tariff language also requires the customer to remain with AEP-VA's generation service for at least 12 months.

The Old Dominion Committee explains in its Petition that Commission Staff Witness Cody Walker, in his testimony filed in this proceeding on September 21, 2001,¹ stated that the 90-day notice requirement was contrary to the enrollment and switching provisions, 20 VAC 5-312-80, of the Commission's Retail Access Rules.² The Old Dominion Committee further states that the Stipulation required that the Standard tariffs and Open Access Distribution ("OAD") tariffs be revised to comply with the Commission's Order, dated October 9, 2001, on minimum stay requirements in Case No. PUE010296.³ The Old Dominion Committee argues that Exhibit 3 to the Stipulation contains no reference to the 90-day waiting period and contemplates that the language in Exhibit 3 be added to the "Use of Energy By Customer" tariff provision in lieu of the language proposed by AEP-VA in its filing.

The Petition further states that the Stipulation, if read thusly, is consistent with Staff Witness Walker's testimony and the Commission's rules governing switching and minimum stay provisions as well as the statutory rights afforded customers under the Virginia Electric Restructuring Act, Va. Code § 56-576, et seq. ("Act"). The Petition contends that AEP-VA's proposed 90-day notice requirement would impose an arbitrary, unreasonable, and anti-competitive barrier to its customers' exercise of their statutory right to choose competitive suppliers "on and after January 1, 2002," pursuant to the Act, Va.

¹ See Staff witness Cody Walker's Testimony filed September 21, 2001, at 25.

² The Commission adopted Rules Governing Retail Access to Competitive Energy Service, 20 VAC 5-312-10 et seq. ("Retail Access Rules"), in its Final Order issued June 19, 2001, Case No. PUE010013.

³ The Commission adopted minimum stay rules in its Final Order issued October 9, 2001, in Case No. PUE010296. See 20 VAC 5-312-10; -70; and -80.

Code § 56-577 A 2, and the Commission's Order of March 30, 2001, in Case No. PUE000740, adopting a plan for phasing in customer choice for all of AEP-VA's customers, commencing on January 1, 2002.

Pursuant to Rule 5 VAC 5-20-220 of the Commission's Rules of Practice and Procedure, the Commission issued an Order Granting Reconsideration on January 8, 2002, and established a schedule for the parties to file responsive pleadings in this proceeding.

Pursuant to the January 8, 2002, Order, AEP-VA filed its Response on January 16, 2002. The Company argues in its Response that the issues raised by the Old Dominion Committee are governed by the terms of the Stipulation to which both the Company and the Old Dominion Committee are parties. AEP-VA further argues that, contrary to the assertion of the Old Dominion Committee, the changes that the Company made to the "Use Of Energy By Customer" provisions of the Company's tariff filing comply with the Stipulation.

AEP-VA contends that it made each and every change required by Exhibit 3 to the Stipulation.⁴ The Company further states that the sentences about which the Old Dominion Committee complains were explicitly preserved by paragraph 3 of the Stipulation which states: "Except as specifically addressed herein, the unbundled rate schedules and tariffs proposed by the Company in this proceeding are acceptable and should be approved." According to AEP-VA, the disputed language is not "specifically addressed" in the Stipulation, and the parties to the Stipulation therefore agreed that the language is "acceptable." Further, the Company contends that the language changes that Exhibit 3 requires to be made to the "Use Of Energy By Customer" provisions of the Company's tariff is

⁴ Exhibit 3 attached to the Stipulation sets forth the specific language changes that were to be made to the Company's Standard and OAD Tariffs in circumstances where a customer switches between Standard and OAD schedules.

incomplete standing alone. AEP-VA argues that because the relevant language in Exhibit 3 concludes with the phrase "subject to the provisions below," the language expressly anticipates that additional provisions follow it, and according to the Company, those additional provisions are not set forth in Exhibit 3. Thus, the Company contends the changes required by Exhibit 3 that were agreed to by the parties to the Stipulation are required in addition to material already in the Company's tariff, not in lieu of that material.

The Company further states that its tariff filing complies with the Commission's minimum stay rules, and that particular provisions of its tariff have been revised to reflect the 500 kW minimum stay threshold required under the Retail Access Rules. AEP-VA argues that the disputed tariff provision applies to customers that have contractual notice requirements. According to the Company, these are the same customers that have minimum stay requirements under the Commission's rules and the Company's tariff, that is, customers whose annual peak demand is 500 kW or greater.

The Company puts forth the additional arguments in its Response that it must plan for a returning customer, and that it must also have some initial assurance that a customer it plans to serve will actually take service. The Company states that without proper notice, large customers could shift load leaving the Company inadequate opportunity to plan for their departure. This could result in the Company purchasing more power than it needs.⁵ Finally, AEP-VA argues that the tariff provision in question does not erode customers' rights to choose their electric generation supplier because notice is only required

⁵ Forms of this same argument were proposed by the various utilities, including AEP-VA, in the minimum stay proceeding, Case No. PUE010296. The Commission addressed this concern through the minimum stay rules, 20 VAC 5-312-10 and -80, which permit the utility to impose the 12-month minimum stay requirements for shopping customers that return and whose annual peak demand is 500 kW or greater.

90 days before service from the Company is discontinued; it does not require notice before a customer may choose.

The Old Dominion Committee filed its Reply on January 23, 2002. The Old Dominion Committee moved in its Reply to file one day out of time. We herein grant the Old Dominion Committee's motion. The Old Dominion Committee contends in its Reply that under the disputed provision, if a customer provides notice to AEP-VA but elects not to switch by the end of the 90-day period, the provision nevertheless imposes a minimum stay requirement on the customer, requiring the customer to continue to take AEP-VA's bundled service for 12 months. The Old Dominion Committee also explains that the disputed language is not in AEP-VA's unbundled rate schedules and tariffs but is in the Company's Standard tariffs; therefore, the Stipulation which applies to unbundled rate schedules and tariffs does not strictly apply to the Company's Standard tariffs.

Further, the Old Dominion Committee argues that Paragraph 1. c. of the Stipulation specifically addressed a customer's ability to change, during a contract, from service under AEP-VA's Standard tariffs to AEP-VA's OAD tariffs where it states that those provisions are to "be governed by the switching and minimum stay provisions adopted by the SCC." Thus, the Company's tariff was to be revised so that the tariff would be governed by the switching and minimum stay rules. According to the Old Dominion Committee, if AEP-VA's interpretation that the Stipulation intended to include the proposed 90-day notice/minimum stay language in the tariff was correct, the switching and minimum stay rules adopted by the Commission would include language authorizing a 90-day notice/minimum stay requirement. But no such requirement exists in the Commission's rules. The Old Dominion Committee further argues that the minimum stay rules prohibit the 90-day notice provision because the proposed tariff provision requires a 12-month minimum stay when the customer gives notice to switch irrespective

of whether the customer switches or not. The minimum stay rules on the other hand require a 12-month minimum stay only for customers that actually take service from a CSP and then return to service from incumbent electric utilities.

In addition, the Old Dominion Committee argues that Exhibit 3 to the Stipulation, which is to include language clarifications to certain portions of the Company's tariff, contains no reference to the 90-day notice/minimum stay provision. The Old Dominion Committee argues that the language in Exhibit 3 must replace the Company's 90-day notice/minimum stay provision to reflect the "Add Paragraph" language in Exhibit 3, and to permit the Company's tariff to conform to the Commission's switching and minimum stay rules. The Old Dominion Committee urges the Commission to reject the argument that notice is necessary for the Company's planning needs. According to the Old Dominion Committee, the Commission's rules and AEP-VA's tariffs include requirements for 15 days' notice to AEP-VA by the CSP. Furthermore, in response to AEP-VA's concern that without the 90-day notice the Company may purchase more power than it needs, the Old Dominion Committee states that a customer who chooses a CSP remains a customer of AEP-VA, and any costs "stranded" are being fully paid to the Company through the capped and wires charges provided in the Act. Finally, the Old Dominion Committee emphasizes its belief that the proposed tariff language violates the Commission's rules and that the Stipulation is consistent with Staff Witness Walker's testimony, which recommended deletion of the disputed language.

First, we will examine the 90-day notice requirement language in AEP-VA's filing, which is the subject of the Old Dominion Committee's Petition. The 90-day notice language is included in the "Use Of Energy By Customer" tariff provisions of the Company's Terms and Conditions of Service and reads as follows:

A customer may not change from one Standard Schedule to another Standard Schedule during the term of the contract except with the consent of the Company. However, the customer may change from a Standard Schedule to the corresponding Open Access Distribution Schedule subject to the following provision. Except in instances where the Company has significant investment in local facilities or other special agreements with the customer, the customer may elect to take service from a qualified Energy Service Provider, pursuant to the terms and conditions of the applicable Open Access Distribution Schedule, by first providing 90-days' written notice to the Company. This provision is notwithstanding a Standard Schedule contractual requirement for longer than 90-days' notice to discontinue service and is applicable only to customers with such a requirement. If upon completion of such 90-day notice period, the customer has not enrolled with a qualified Energy Service Provider, then the customer must continue to take service under the Company's Standard Service Schedules for a period of not less than twelve (12) consecutive months.⁶

We shall also review the "Rate Unbundling Stipulation," referred to herein as the Stipulation, entered into by the parties to this proceeding including the Old Dominion Committee, AEP-VA, and the Commission Staff, and adopted by the Order. The Stipulation specifically addressed a customer's movement from the Company's Standard Schedule to its OAD Schedule. Paragraph 1. c. of the Stipulation, titled "Tariff Language," states in pertinent part:

The Standard and Open Access Distribution (OAD) tariffs filed by the Company shall be revised to clarify the provisions regarding a customer's ability to change from service under a Standard rate schedule to the corresponding OAD rate schedule or from service under an OAD rate schedule to a corresponding Standard rate schedule during the customer's term of contract. Such movements are governed by the switching and minimum stay provisions adopted by the SCC. The language clarifications are set forth in Exhibit 3 to this Stipulation.

...

⁶ Application of Appalachian Power Company d/b/a American Electric Power-Virginia for Approval of Functional/Corporate Separation Plan, tariffs filed December 28, 2001, AEP-VA Standard Tariff Terms and Conditions of Standard Service Standard Rate Schedules, Sheet 3-4.

The Company will revise its Standard and OAD Tariffs to comply with the Commission's Order dated October 9, 2001 on minimum stay requirements in Case No. PUE010296.

Exhibit 3, referenced above in Paragraph 1. c. to the Stipulation, sets forth the specific language modifications to be made to certain portions of AEP-VA's tariff that address those customers who leave Standard service and take service from a competitive service provider ("CSP"). Exhibit 3 indicates, under "Standard Tariff Changes," that the following underlined language was to be added to the Company's "Use Of Energy By Customer" tariff provision:

A customer may not change from one Standard Schedule to another Standard Schedule during the term of the contract except with the consent of the Company. However, the customer may change from a Standard Schedule to the corresponding Open Access Distribution Schedule subject to the provisions below:

While Exhibit 3 added the underlined language above, it did not contain language that would specifically revise the Company's proposed tariff to delete the 90-day notice requirement language.⁷

We find that while Exhibit 3 failed to include specific language deleting the 90-day notice/minimum stay provision, the Company's tariffs must conform to the switching and minimum stay rules. As evidenced above, the Stipulation expressly indicates this fact in Paragraph 1. c. where it states that the Company's tariffs are governed by and must comply with the switching and minimum stay requirements adopted by the Commission in the Retail Access Rules, 20 VAC 5-312-10 et seq. These rules provide that the local distribution company may require a 12-month minimum stay for those customers with an annual peak demand of 500 kW or greater that, after receiving electricity supply

⁷ The Old Dominion Committee argues that the Stipulation required that the 90-day notice language be removed from the tariff and the third paragraph be replaced by the language in Exhibit 3. The Old Dominion Committee's Petition at 3-7; Reply at 3-4. AEP-VA contends that the 90-day notice language was preserved by the Stipulation, and the relevant language in Exhibit 3 was only to serve as the opening two sentences of the third paragraph. AEP-VA's Response at 2-3.

service from a CSP, request service by the local distribution company.⁸ We find that the tariff language included in AEP-VA's tariff protested by the Old Dominion Committee is not consistent with the Commission's rules pertinent thereto.

First, we agree with the Old Dominion Committee that under the proposed provision, once notice is given of the intended switch, the customer is subject to a 12-month minimum stay, regardless of whether the customer actually switches to a CSP. This outcome is contrary to the workings of the minimum stay rules, 20 VAC 5-312-10 and -80, which allow the local distribution company to require a 12-month minimum stay period for customers with an annual peak demand of 500 kW or greater, but only if the customer *receives service* from a CSP and then returns to the local distribution company.⁹ Under our rules, a minimum stay period cannot be imposed on a customer who gives notice of his intent to switch to the local distribution company, but does not receive service from a CSP.

Moreover, the 90-day notice effectively imposes a 90-day minimum stay period. That is the obvious effect of requiring a full 90-day notice before a customer is allowed to switch. Otherwise, at any time during that 90-day period, the customer could have switched and begun to receive service from a CSP of his choice. The Retail Access Rules do not provide for such a waiting period before a customer is allowed to leave the incumbent electric utility.

⁸ 10 VAC 5-312-10 defines "Minimum stay period" as "the minimum period of time a customer who requests electricity supply service from the local distribution company, pursuant to § 56-582 D of the Code of Virginia, after a period of receiving electricity supply service from a competitive service provider, is required to use such service from the local distribution company." 20 VAC 5-312-80 Q states "[t]he local distribution company may require a 12-month minimum stay period for electricity customers with an annual peak demand of 500 kW or greater. Electricity customers that return to capped rate service provided by the local distribution company as a result of a competitive service provider's abandonment of service in the Commonwealth may choose another competitive service provider at any time without the requirement to remain for the minimum stay period of 12 months."

⁹ 20 VAC 5-312-10. This criterion specifically appears in Va. Code § 56-577 E as well.

Also, the proposed provision conflicts with the enrollment and switching provisions of the Retail Access Rules. Under the enrollment and switching rules, a CSP, with affirmative authorization from a customer, may enroll a customer by submitting an enrollment request to the local distribution company at least 15 days prior to the customer's next meter reading date.¹⁰ The Company's proposed notice provision is contrary to these rules which do not require any customer to give notice to the local distribution company before the customer enrolls with the CSP, nor do the rules require the customer to satisfy a waiting period before the customer is switched to the CSP of his choice, as long as the CSP sends the required enrollment request to the Company at least 15 days prior to the next meter reading date.

Next, the 90-day notice and minimum stay requirements would appear to apply to all customers who choose a CSP, not just customers who have an annual peak demand of 500 kW or greater. The limitation argued by the Company in its pleadings is not readily apparent from the tariff language. To the extent that the notice requirement could apply to a customer with annual average peak demand of less than 500 kW, it would be in obvious conflict with the minimum stay rules, 20 VAC 5-312-10 and - 80.¹¹

¹⁰ See 20 VAC 5-312-80 A and B. 80 A states "[a] competitive service provider may offer to enroll a customer upon: (i) receiving a license from the State Corporation Commission; (ii) receiving EDI certification as required by the VAEDT or completing other data exchange requirements as provided by the local distribution company's tariff approved by the State Corporation Commission, including the subsequent provision of a sample bill as required by 20 VAC 5-312-20 M; and (iii) completing registration with the local distribution company. " 80 B states in relevant part that "[a] competitive service provider may enroll, or modify the services provided to, a customer only after the customer has affirmatively authorized such enrollment or modification." The CSP must then submit an enrollment request to the local distribution company at least 15 days prior to the customer's next meter reading date. The local distribution company must give notice to the customer normally within one business day of receiving the enrollment request from the CSP.

¹¹ See AEP-VA's Response at 3-4.

NOW, upon consideration of the foregoing, the Commission is of the opinion and finds that the proposed 90-day notice/minimum stay provision conflicts with the Commission's switching and minimum stay rules. Accordingly, the third paragraph of the Company's "Use Of Energy By Customer" tariff provisions shall be revised to read in its entirety as follows:

"A customer may not change from one Standard Schedule to another Standard Schedule during the term of contract except with the consent of the Company. However, the customer may change from a Standard Schedule to the corresponding Open Access Distribution Schedule."

Furthermore, any other applicable portions of the tariff including the disputed 90-day notice/minimum stay language shall be similarly revised.

In accordance with 20 VAC 5-312-80 R, AEP-VA may, at some future time, upon a proper showing supported by evidence acquired through actual experience, apply for approval from the Commission to implement alternative minimum stay period requirements. Also pursuant to that rule, if AEP-VA applies to lower the applicability limit below 500 kW, such application shall include, at a minimum, the detailed information prescribed by the Commission in its Final Order in Case No. PUE010296, or as may be revised in a subsequent order.¹²

Accordingly, IT IS ORDERED THAT:

- (1) The Old Dominion Committee's motion to file its Reply one day out of time is granted.
- (2) The Company shall revise all applicable portions of its tariffs to comply with the findings in this Order.
- (3) The Company shall re-file all applicable tariff sheets reflecting those changes with the Commission on or before March 11, 2002.

¹² 20 VAC 5-312-80 R.

- (4) This matter is continued for further orders of the Commission.